

# Kansas State Board of Nursing



## The Practice Acts And Delegation

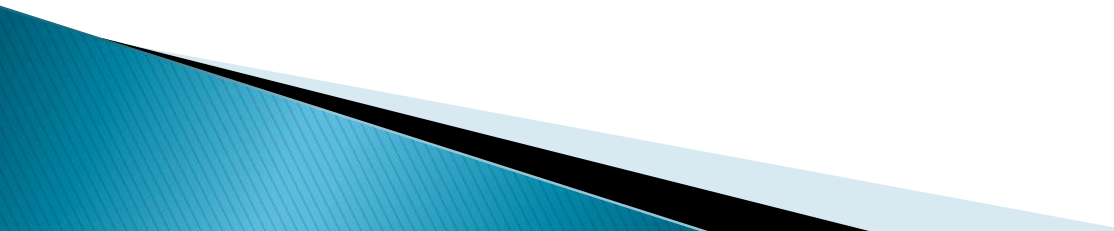
# Definition of Healing Arts

- ▶ **65–2802. Definitions.** ... (a) The healing arts include any system, treatment, operation, diagnosis, prescription, or practice for the ascertainment, cure, relief, palliation, adjustment, or correction of any human disease, ailment, deformity, or injury, and includes specifically but not by way of limitation the practice of medicine and surgery; the practice of osteopathic medicine and surgery; ...

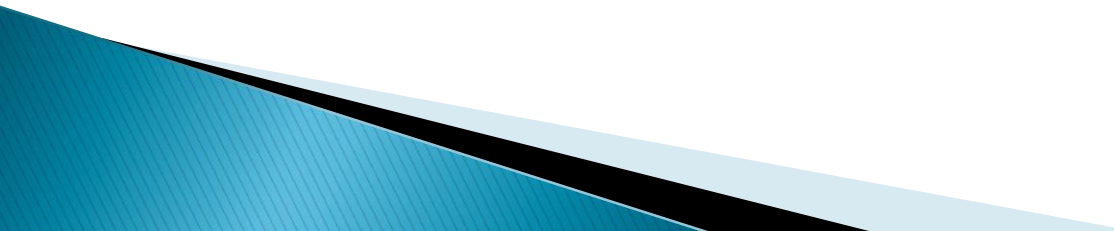
# Definition of Medicine and Surgery

- ▶ **65–2869. Persons deemed engaged in practice of medicine and surgery.** For the purpose of this act the following persons shall be deemed to be engaged in the practice of medicine and surgery: ...
  - (b) Persons who prescribe, recommend or furnish medicine or drugs, or perform any surgical operation of whatever nature by the use of any surgical instrument, procedure, equipment or mechanical device for the diagnosis, cure or relief of any wounds, fractures, bodily injury, infirmity, disease, physical or mental illness or psychological disorder, of human beings.

# License as MD/DO Required

- ▶ **65–2803. License prerequisite to practice of the healing arts; exceptions; penalty. ...**(a) It shall be unlawful for any person who is not licensed under the Kansas healing arts act or whose license has been revoked or suspended **to engage in the practice** of the healing arts as defined in the Kansas healing arts act. ...
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# Or an Exception to Physician Licensure

- ▶ **65–2872. Persons not engaged in the practice of the healing arts.** The practice of the healing arts shall not be construed to include the following persons: ...
  - ▶ (a) **Persons rendering gratuitous services in the case of an emergency.**
  - ▶ (b) **Persons gratuitously administering ordinary household remedies.**
  - ▶ (m) **Nurses practicing their profession when licensed and practicing under and in accordance with the provisions of article 11 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, and any interpretation thereof by the supreme court of this state.**
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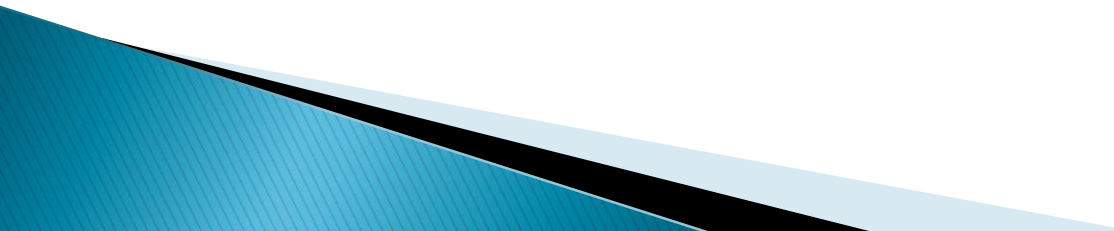
# Physician Standard – Order or Delegate

- ▶ 65–28,127. Licensees who ... order, ... or delegate acts which constitute practice of healing arts to others; ...
- ▶ (a) Every responsible licensee who ...orders, ... or who **delegates** acts which constitute the practice of the healing arts to other persons **shall**: ...
- ▶ 3) ...order, ... or **delegate** ... **only those acts** and functions which the responsible licensee **knows** or has reason to believe **can be competently performed** by such person and is **not in violation of any other statute** or regulation;

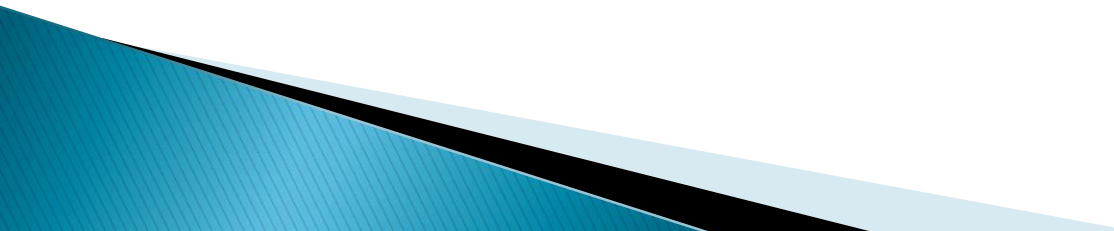
# KSBN and the KNPA

KSA 65-7401 et seq.

KSA 65-1113 et seq.

- ▶ Nursing Board established by **Legislative action** in 1913 (BoHA in 1912)
  - ▶ **Protecting the Citizens of Kansas** from incompetent, immoral and unscrupulous individuals by
  - ▶ **Licensure** of qualified individuals
  - ▶ Approval of Nursing **Education** Programs
  - ▶ Defining **scopes** of practice and setting grounds for **discipline** of licenses after investigation
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# License as LPN/RN/APRN Required

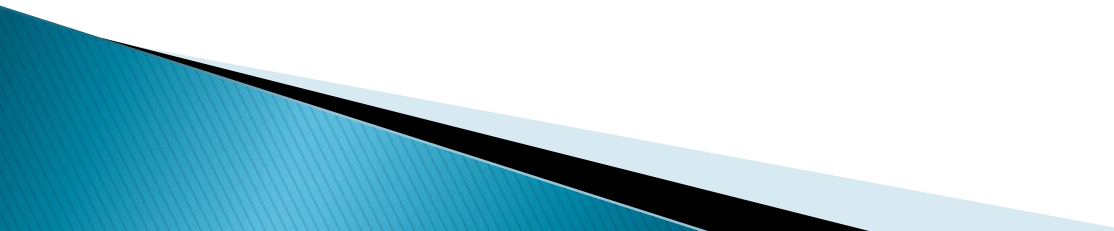
- ▶ **65–1114. Unlawful acts. ...**
  - ▶ (a) It shall be **unlawful** for any person:
  - ▶ (1) **To practice ... (2) to use any title ... to indicate ... licensed ... unless such person has been duly licensed ...**
  - ▶ **LPN/RN/APRN**
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# Or An Exception to Nursing Licensure

- ▶ 65-1124 ...
  - ▶ (a) **Gratuitous** nursing by **friends** or members of the **family**;
  - ▶ (b) the incidental care of the sick by **domestic servants**...
  - ▶ (d) nursing assistance in the case of an **emergency**;
  - ▶ (l) performance of **attendant care services** directed by or on behalf of an individual in need of in home care ...  
*(still involves delegation by the physician or their nurse)*
  - ▶ (m) performance of a nursing procedure by a person when that procedure is **delegated by a licensed nurse**...
- (1992) \*

# Limitations of the Exceptions to Nursing Licensure

- ▶ Unlicensed persons cannot perform of own volition or assign or delegate to anyone else.
  - ▶ Unlicensed persons can only perform on own if performing gratuitous actions as friend or family or domestic servants.
  - ▶ Unlicensed persons can perform if delegated to by a Physician or Nurse.
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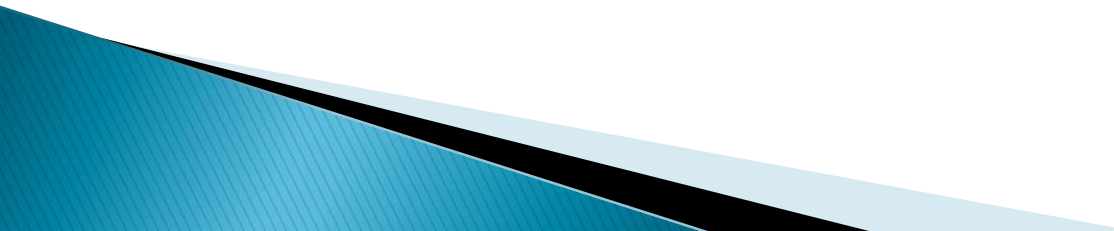
# Nursing Scope

- ▶ KSA 65–1113...(b) **“Diagnosis”** in the context of **nursing** ....shall be construed as **distinct from a medical diagnosis**.
- ▶ ... (c) **“Treatment”** means the selection and performance of those therapeutic measures essential to effective execution and management of the **nursing regimen, and any prescribed medical regimen**.

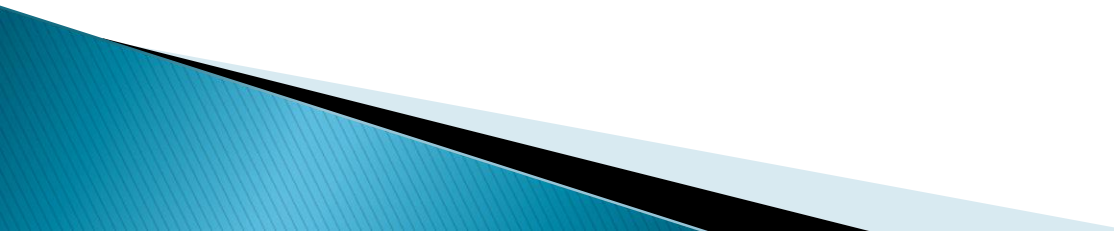
# RN Scope of Practice

- ▶ KSA 65–1113 (d) (1) ... care, nursing diagnosis, nursing or medical treatment, counsel, health teaching, administration, supervision, teaching of the nursing process, execution of the medical regimen as prescribed by an individual licensed to practice medicine or surgery...

# LPN Scope of Practice

- ▶ KSA 65–1113(d)(2)
  - ▶ Tasks (*assigned pieces of work*) and responsibilities from (d)(1) for registered nurses
    - 1) Based on acceptable education
    - 2) In the area of supportive or restorative care
    - 3) Under the supervision of RN, MD, DO or DDS
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# National Council State Boards of Nursing

- ▶ **Assignment** is made to **licensed** individuals, is confined to their own scope of practice and is their responsibility with some supervision of the nurse  
LPNs, LMHTs, CMAs, CNAs, HHAs...
  - ▶ **Delegation** is made to **unlicensed** individuals and while they bear responsibility for their actions there is a requirement of more supervision by the nurse.  
Skilled workers that sometimes hold licenses/registrations allowing practice in other arenas ...
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# History of KS Nursing Delegation

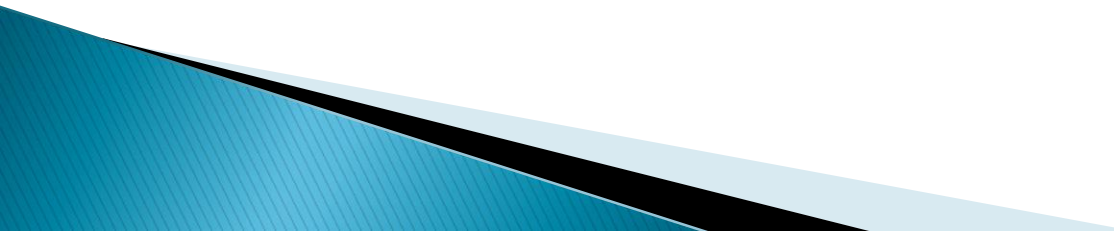
- ▶ 1988 – First addressed in the School Nurse Regulations at KAR 60–15–103 and 60–15–104.  
*(are a great resource for all delegation)*
- ▶ 1992 – Work with disability advocates. Addressed by Legislature in KSA 65–1124(m)\*. Resulting Letter Agreement (SRS,KSBN, KSNA, Ks Assn of Rehab facilities) focus on statutory language **“independent nursing judgment.”**

# History cont..

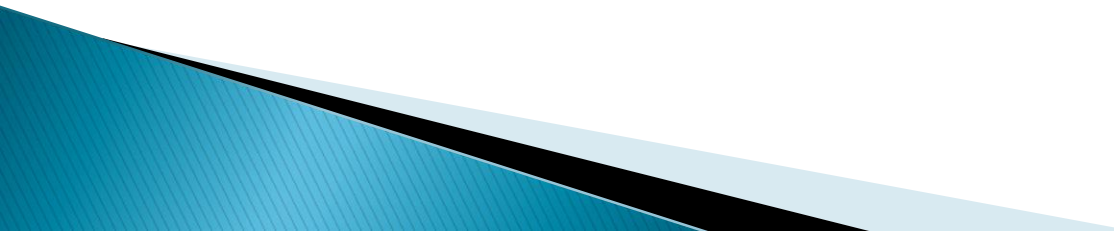
- ▶ 1995 – Addressed by the Legislature in statute KSA 65–1165 to clarify 65–1124(m) due to multiple questions/issues. Focus on **“delegated by a licensed nurse to a designated unlicensed person shall be supervised.”** ...



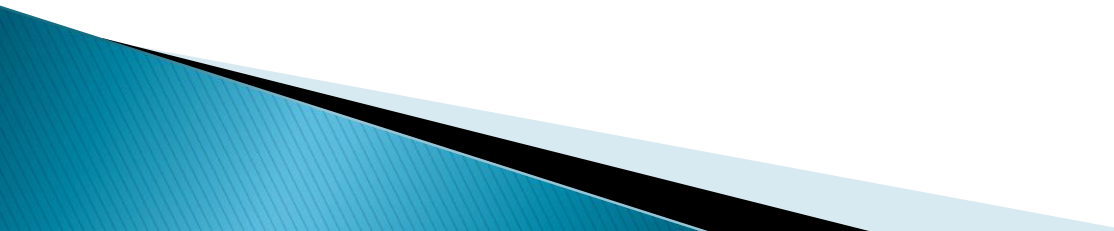
# History cont...

- ▶ 1995 & 1996 – HCBS Waiver Amendment Team (SRS) multiple discipline review.
  - ▶ Balance of Kansas consumer protections through statutory compliance but with a mind for flexibility/economy offered.
  - ▶ Definitions, multiple agency expectations and education to be offered to Providers.
  - ▶ 1996 began offering education on nursing delegation
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# Decision to Delegate or Not to Delegate

- ▶ Is **judgment** required?
  - ▶ The definition of nursing practice in (d)(1)  
“means the process in which **substantial specialized knowledge derived from the biological, physical, and behavioral sciences is applied to:**” ...
  - ▶ If the use of substantial specialized knowledge is necessary to complete the task it is **not delegable**.
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# If Delegation is permitted

- ▶ **“independent nursing judgment”** no one else can interfere or usurp the decision of the nurse or they can be penalized.
  - ▶ The nurse must perform an analysis of appropriate factors as required by KSA 65–1165.
  - ▶ The statute sets out four factors but they are not all inclusive.
  - ▶ Other factors: laws, accrediting body requirements, insurance carrier requirements, billing factors,
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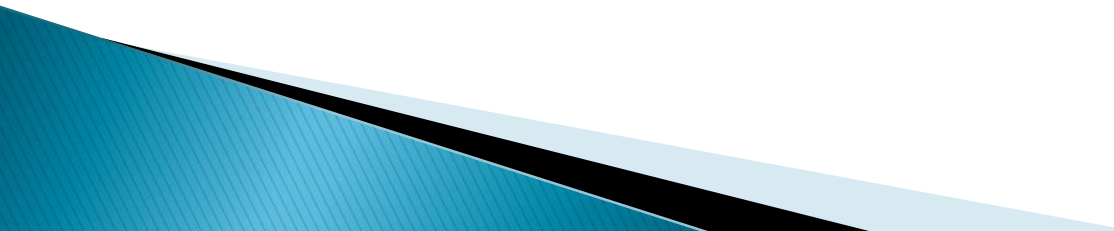
# Nursing Delegation Statute

- ▶ KSA 65-1165. (a) **All nursing procedures**, including but not limited to administration of medication, **delegated** by a licensed nurse to a designated unlicensed person **shall be supervised**. The **degree** of supervision required shall be determined by the licensed nurse after an assessment of appropriate **factors** which may include;
  - ▶ (1) the health status and mental and physical stability of the individual receiving the nursing care;
  - ▶ (2) The complexity of the procedure to be delegated;
  - ▶ (3) the training and competency of the unlicensed person to whom the procedure is to be delegated; and
  - ▶ (4) the proximity and availability of the licensed nurse to the designated unlicensed person when the selected procedure will be performed....

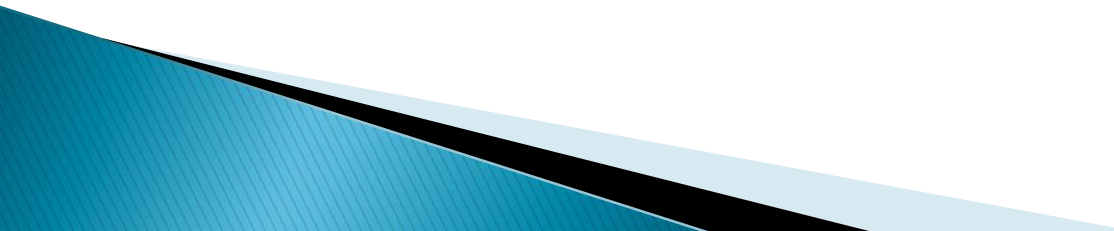
# Supervision

- ▶ KSA 65–1136...(a) As used in this section:  
...
- ▶ (4) “**Supervision**” means provision of **guidance** by a qualified nurse for the accomplishment of a nursing task or activity with **initial direction** of the task or activity and **periodic inspection** of the actual act of accomplishing the task or activity. ...

# Basic Liability Concepts in Delegation

- ▶ Requirement of knowing and understanding the different practice scopes (not just nursing) and when they apply.
  - ▶ Evaluation of each individual's education/skill/competence before assigning or delegating.
  - ▶ One free bite.
  - ▶ Remediation and/or removal from practice if necessary.
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# Penalties for Law Violations

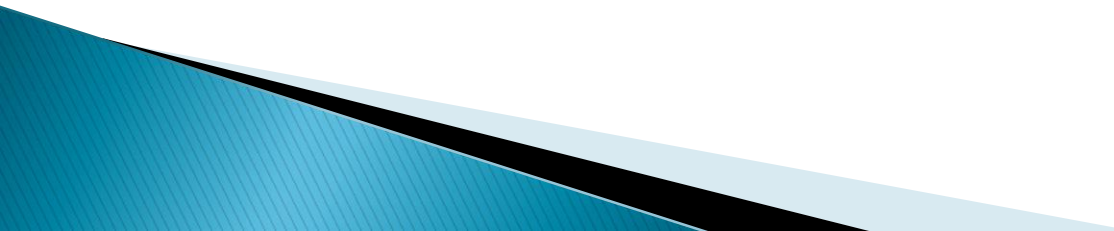
- ▶ Applies to “any person, firm, corporation or association”...
  - ▶ Board preference is for informal process to educate.
  - ▶ Unlicensed persons, firms, corporations are subject to injunctive relief and/or criminal prosecution.
  - ▶ Licensed persons are subject to discipline action on the license, administrative fines and/or criminal prosecution.
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# Discipline Grounds Statute

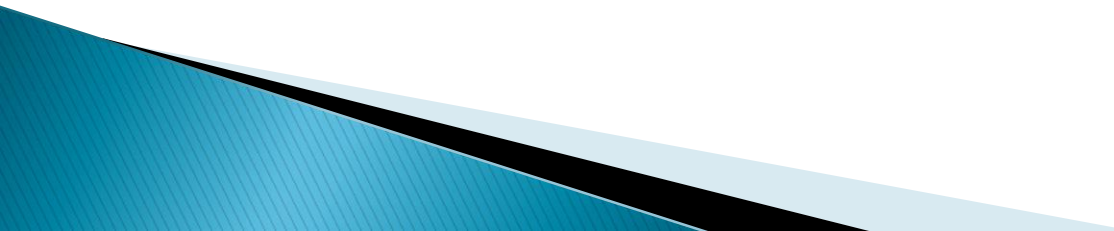
- ▶ KSA 65–1120. Grounds for **disciplinary** actions; ...
  - (a) ...The board may deny, revoke, limit or suspend any license or authorization to practice nursing ... if ... found after hearing: ...
    - (6) to be guilty of unprofessional conduct as defined by **rules and regulations** of the board; ... (KAR 60–3–110)



# Discipline Grounds Regulation

- ▶ KAR 60–3–110. Unprofessional conduct. ...
  - ▶ (h) delegating any activity that requires the unique skill and substantial specialized knowledge derived from the biological, physical, and behavioral sciences and judgment of the nurse to an unlicensed individual in violation of the Kansas nurse practice act or to the detriment of patient safety;
  - ▶ (i) assigning the practice of nursing to a licensed individual in violation of the Kansas nurse practice act or to the detriment of patient safety;
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# Discipline Grounds Regulation

- ▶ (b) assuming duties and responsibilities within the practice of nursing without making or obtaining adequate preparation or maintaining competency;
  - ▶ (c) failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard each patient;
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